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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
AMERICAN TELEPHONE AND )  
TELEGRAPH COMPANY )  
 )  
Petition for the Establishment of Additional )  
Standards to Govern Study Area Boundary )  
Changes in Connection with the Transfer )  
of Service Territories Between or Among )  
Local Exchange Carriers )

RM-8334

**U S WEST COMMENTS**

The proposals AT&T submits in its September 3 rulemaking petition are more appropriately addressed in another rulemaking proceeding currently pending.<sup>1</sup> U S WEST Communications is, therefore, compelled to oppose AT&T's petition.

1. AT&T's Proposal to Require the Submission of Additional Data Is Moot. AT&T proposes that applicants seeking a waiver of their respective study area boundaries to consummate the sale of an exchange should be required to submit additional "detailed information" with their waiver petitions.<sup>2</sup> According to AT&T, the information that the Bureau has required

<sup>1</sup>See Public Notice, DA 93-1128 (Sept. 20, 1993).

<sup>2</sup>AT&T Petition at 10.

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in all past waiver requests has "not [been] sufficient" and that, as a result, the Bureau's past decisions have been "[un]informed."<sup>3</sup>

Specifically, AT&T wants applicants to submit data concerning such matters as modernization plans; the accounting entries the buyer plans to use to record the transaction; relevant depreciation studies; relevant interstate allocation factors; pro forma revenue requirement calculations; route miles of loop plant being sold; and whether the buyer intends to request permission to record amortizations of amounts in Account 32.2005.<sup>4</sup> AT&T further asks the Commission to "act promptly" on its proposal.<sup>5</sup>

The Common Carrier Bureau has already effectively acted on this portion of AT&T's petition. One business day after AT&T filed its petition, the Bureau issued a Public Notice, "Suggestions for Parties Filing Study Area Waiver Requests," recommending that waiver applicants submit the very same data that AT&T had proposed be submitted.<sup>6</sup> While the Bureau did not "mandat[e]" submission of the data it identified, it did state un-

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<sup>3</sup>Id. at 8 and 11. However, AT&T nowhere explains why, if it believes that the Bureau's decisions have been uninformed, it waited so long before making its "more-information-is-needed" proposal.

<sup>4</sup>See id. at 10-11.

<sup>5</sup>Id. at 8. In seeking this data, AT&T does not attempt to explain just how the submission of this additional "detail" is material — that is, how it would change the outcome of a given waiver petition.

<sup>6</sup>See Public Notice, DA 93-1093 (Sept. 7, 1993). This Public Notice gives the erroneous impression that the delays associated with U S WEST's waiver requests are due to the failure of U S WEST and the acquiring companies to respond fully to Bureau inquiries. In fact, the first time the Bureau requested this data was on September 3, 1993 in connection with U S WEST's Utah waiver — a request made only after those petitions (one of which is unopposed) had already been pending for five months.

equivocally that such data "will provide a better basis for review of [waiver] petitions, and will obviate . . . the delays that may result from such requests for supplemental materials."<sup>7</sup> There is no reason whatsoever to codify these same information requirements into the Commission's rules — even assuming such action were an appropriate subject for rulemaking.<sup>8</sup>

2. AT&T's Remaining Proposals Are More Appropriately Addressed In The Pending USF Reform Rulemaking Proceeding. Currently, there is only one criterion to become eligible to receive Universal Service Fund ("USF") assistance: any telephone company is eligible so long as its loop costs are 115% of the national average of loop costs. AT&T believes that the Commission should add two more criteria:

- Local ratepayers should make "a meaningful contribution" toward the cost of "any planned upgrades in service;" and

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<sup>7</sup>Public Notice, DA 93-1093 (Sept. 7, 1993).

<sup>8</sup>AT&T's "more-information-is-needed" proposal is also inappropriate for rulemaking for two, distinct reasons. First, the Commission has never, at least to U S WEST's knowledge, incorporated into its rules the standard for evaluating a waiver of its rules, much less the type of data needed to support a waiver request. Indeed, the standard the Bureau has used to evaluate study area waivers is not codified, and even AT&T does not contend that those standards should be codified. In these circumstances, it makes no sense to codify the type of data that should be submitted in support of study area waivers when the criteria themselves are not codified.

Second, AT&T's proposal cannot be squared with the recently published National Performance Review, which recommends that federal agencies reduce their regulations and reporting requirements by 50%. The level of detail sought by AT&T is the type of detail one would expect would be submitted in connection with multi-billion dollar transactions, not with transactions that, collectively, involve less than one-twentieth of one percent (0.05%) of all access lines in this country.

- The amount of assistance certain USF recipients receive (e.g., purchasers of exchanges) should be "temporarily capped."<sup>9</sup>

In addition, AT&T contends that the Commission should "preclude entry" into the NECA traffic sensitive pool if such entry would "create upward pressure on NECA's [traffic sensitive] rates."<sup>10</sup>

AT&T's petition must be dismissed because of its failure to comply with Commission rules. Rule 1.401(c) specifies that a rulemaking petition "shall set forth the text or substance of the proposed rule." Nowhere in its petition does AT&T set forth the text or substance of rules it thinks the Commission should publish for public comment. It does not, for example, explain how local ratepayers should make "a meaningful contribution" or how much of a contribution AT&T thinks ratepayers should make; nor does AT&T specify the length of time it thinks the level of assistance should be "temporarily capped." There is, in short, not sufficient detail in the petition for the Commission to formulate possible rules which can be published for

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<sup>9</sup>AT&T Petition at 12 and n.17. AT&T's suggestion that the Commission implement AT&T's proposals before the Commission completes a new notice-and-comment proceeding would contravene the Administrative Procedures Act. See, e.g., AT&T v. FCC, 974 F.2d 1351 (D.C. Cir. 1992)(AT&T successfully argues that this Commission had unlawfully attempted to impose a new rule without complying with APA requirements).

<sup>10</sup>Id. at 14 n.19. U S WEST has previously demonstrated that AT&T's undocumented and unsupported allegations regarding impact on NECA's traffic sensitive rates are contrary to fact. See U S WEST Reply to Oppositions, AAD 93-83 *et seq.*, at 16 (Sept. 28, 1993). Besides, the Commission recently held that even the addition of the highest cost study area over 50,000 lines "will have a de minimus impact on [the NECA] pool." Amendment of Part 69, CC Docket No. 89-2, FCC 89-272, at ¶ 31 (Aug. 23, 1989)(holding that prior approval is required only when the transaction resulting in "a net addition of more than 50,000 access lines to the NECA common pool.").

public comment. AT&T's failure to comply with these basic Commission rules is itself grounds to dismiss the petition.

Besides, there has been an important development since AT&T filed its petition. On September 14 the Commission published a Notice of Proposed Rulemaking recommending establishment, before the end of this year, of temporary caps on the growth of the USF fund.<sup>11</sup> The Commission also stated therein that it would be issuing in the very near future a further notice of proposed rulemaking "addressing possible permanent changes in the Part 36 USF rules."<sup>12</sup>

AT&T's USF reform proposals are better addressed in this comprehensive USF rulemaking; no purpose is served by commencing a new proceeding covering the very same subject as a docket already pending.<sup>13</sup>

\* \* \*

One final point bears noting in closing. The Commission should be aware that most of the factual assertions contained in AT&T's petition are either factually unsupported or inconsistent with the facts. Because AT&T's petition should be dismissed, no purpose is served by identifying all of these factual inaccuracies here.<sup>14</sup>

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<sup>11</sup>See Amendment of Part 36, CC Docket No. 80-286, FCC 93-435 (Sept. 14, 1993).

<sup>12</sup>Id. at 1 ¶ 2.

<sup>13</sup>See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, FCC 93-454, at 23 ¶ 63 (Oct. 8, 1993); Implementation of Section 309(j) of the Communications Act, PP Docket No. 93-253, FCC 93-455, at 61 n.200 (Oct. 12, 1993).

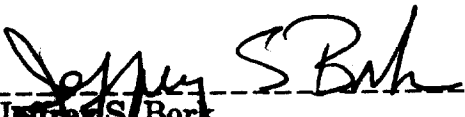
<sup>14</sup>For example, completely unsupported is AT&T's assertion that the sale of unspecified exchanges by unspecified telephone companies over an unspecified period of time will

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In summary, the Commission should dismiss AT&T's petition for the reasons set forth above.

Respectfully submitted,

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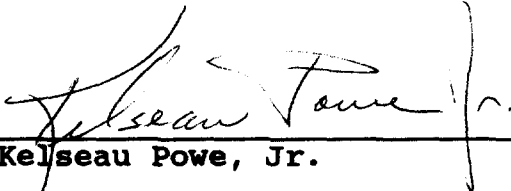
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"increase the USF by as much as \$400 million." Petition at 8. Moreover, AT&T misuses the public record in attempting to support its proposals. AT&T states, correctly, that the Commission has said that the current study area waiver procedure "does not work well." *Id.* at 8. However, the Commission made this statement in proposing to obviate the need to obtain waivers altogether, not to justify the imposition of new, "detailed" obligations. See Amendment of Part 36, 5 FCC Rcd 5974 (Oct. 10, 1990).

**CERTIFICATE OF SERVICE**

I, Kelseau Powe, Jr., do hereby certify that on this 20th day of October, 1993, I have caused a copy of the foregoing **U S WEST COMMENTS** to be served via first-class United States Mail, postage prepaid, upon the person listed on the attached service list.

  
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